IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 525

HERBERT E. SAIER, Petitioner

vs.

STATE BAR OF MICHIGAN, THE SUPREME COURT OF THE STATE OF MICHIGAN, ET AL., Respondents

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PETITIONER'S REPLY TO BRIEF OF STATE BAR OF MICHIGAN, ET AL

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Respondents' brief contains flagrant distortions of evidence. A few illustrations will demonstrate how serious they are.

STATEMENT OF MATERIAL FACTS

On page 3 of the State Bar Brief, Counsel hedged quite cleverly about the fact that the September 10, 1956 complaint was not returned to this Petitioner on October 8th, 1956, but he does not deny the truth of the letters of the Clerk of the Michigan Supreme Court stating that same was in the State Bar File after October 8th, 1956 (Certified Record from Court of Appeals), dated November 10, 1960, and (R-84a); nor did counsel deny the fact (center page 13 Petition) that he had personally admitted that the September 10th, 1956, complaint was in the State Bar File in his office after October 8th, 1956; nor did said counsel deny that he was the Grievance Administrator for the

State Bar of Michigan and was personally responsible for the proper processing of complaints filed for disciplinary action under Rule 15 of the Supreme Court Rules Concerning the State Bar of Michigan — nor does he offer to explain his failure to perform his duty in the premises (R-60a). That all complaints are in his custody and care, therefore having personal knowledge of facts.

On pages 3 and 4 of the State Bar Brief, counsel deliberately and knowingly misstated the facts as to copies for accused attorneys, because he well knows that this Petitioner filed with each of the four separate complaints filed with the State Bar against the several attorneys, in addition to a copy of the complaint, a complete set of photostatic copies of the exhibits pertaining to each attorney claimed misconduct (Page 24, Petition) and Also letter from Don Winters, Clerk of Supreme Court of Michigan in Certified Record — dated November 21, 1958 saying "• • • contains besides letters and copies of letters, three sets of photostats, two of which are of considerable size and one about half size of the first two." One of complained about attorneys (Oscar J. Hood is deceased and he was in only about half the charges, so smaller set) Also see letter of Clerk of the Supreme Court of Michigan, dated January 28, 1959, and here all records that are missing from the Clerk of Supreme Court's File, showing the four complaints are not missing, but, enormous amount of the Supreme Court File was taken — but — nowhere does the Supreme Court or the State Bar do anything about it. Only the accused attorneys had the record out of the Clerk's office.

The comments as to the Will on pages 4 and 5 are to a large degree false, but the Will was duly admitted to probate and the question is not relevant in this appeal; the remarks have no proper place in either the statement of facts or the argument herein.

On page 5, center paragraph, in the Statement of Facts, in the State Bar Brief, counsel again displayed his willingness to deliberately misstate the facts. He refers to a second revision of the complaint and gives the impression that there was only such second revision and nothing further. The records show four different sets of complaints; there was the original on October 10, 1955; the first re-

vision on July 16, 1956: the second revision on July 28, 1956, and the third revision on September 10, 1956: (Page 10 Petition). These revisions were, to the knowledge of counsel, made in the State Bar Office on each occasion and were approved by the officer on duty in the State Bar Office. So counsel conveys a false impression of a running dispute as to the form of the complaints filed. It was admitted by Secretary Bachmann in September of 1956 that he was not even going to process the complaints (R-65a). No denial.

ARGUMENT

I.

Concerning Federal Court Jurisdiction.

Counsel for State Bar and its officers attempt to direct the Court to an issue of Federal Court review of a State Court or of a State Court's rules concerning the discipline of officers of said State Court for misconduct. This Petitioner seeks no review of this type and there is no basis for counsel to so contend (R-58a — lines 14-15).

This action is for conspiring to deprive and for actual deprivation of rights guaranteed by the Constitution and for determination as to the constitutionality of *Michigan Public Act* No. 58 of 1935 and as to the constitutionality of certain rules concerning the State Bar.

The deprivation results from the failure and refusal of the State Bar and its officers to follow their own rules in processing complaints filed by this Petitioner and the failure and refusal of the State Supreme Court to require that such rules be followed. This Petitioner, also, contends that the State Bar and the State Supreme Court conspired together and with others to deprive Petitioner of his rights in the premises.

Title 28 *U. S. C. A.* 1343 (3) expressly gives the Federal District Court jurisdiction over such deprivation of rights cases.

The constitutionality of the State Bar Act and of certain Rules Concerning the State Bar, where same may be involved in the Civil Rights Statute, are determinable in that phase of the case and otherwise are determinable by

virtue of the issues having been raised in a damage suit grounded, jurisdictionally, upon diversity of citizenship.

The arbitrary denial of a writ requiring the State Bar to follow the rules was an actionable deprivation of rights cognizable by the Federal Court.

However, the important fact is that arbitrary deprivations of constitutional rights, under the guise of law, actually took place in the case at bar.

Certainly the states have jurisdiction over their attorneys and judges, over their bar associations — but this does not permit arbitrary action on the part of officials contrary to the Constitution. *Konigsberg vs. State Bar of Cal.*, 353 U. S. 252; *Schware vs. Board of Bar Examiners*, 353 U. S. 232.

B. *As to constitutionality of State Bar and Rules being determinable in this proceeding.*

The validity of the State Bar Act and the Rules Concerning the State Bar are directly tied into the issue of deprivation of rights guaranteed by the Constitution and, therefore, must of necessity be determinable in this action involving such deprivation of rights and involving conspiracy to deprive of such rights.

The Civil Rights Statute provides that actionable deprivation of constitutional rights must be under color of law. The respondents herein, while pretending to act upon legal authority, did, under the guise of law, resort to the arbitrary deprivation of rights and to the conspiracy to deprive of rights. Therefore, the provisions of the law; the validity, the constitutionality of the laws involved; the validity and legality of the actions taken under color of state law — are all pertinent to the issues here involved and must, as a matter of legal necessity, be determinable in this proceeding.

If the State Bar Act is unconstitutional, if the Rules thereof are unconstitutional, if the sitting of the State Supreme Court was unconstitutional — anything in the circumstances involved which might be found unconstitutional would have a direct bearing on this case, so this Court must have the right and the jurisdiction to determine such issues.

The denial of certiorari by the Court in Re: *Petition of Walter O. Estes* was not a ruling on the merits, so can be given no authoritative effect here.

C. ***As to the proceeding being an attempted collateral attack on proceedings in the State Courts.***

The contentions of counsel for the State Bar are absurd and unreasonable on this point.

The will mentioned has long since been admitted to probate, with the approval of this Petitioner made a matter of record. Therefore, all discussion of said will is to be disregarded in this proceeding; it is not involved. The statements made about the said will are actually false, but being immaterial, the matter need not be pursued further. Petitioner was subpoenaed, but was not allowed to testify. See *Saier, In re*, 342 Mich. 587 at page 593.

The other matters mentioned have been covered elsewhere and need not be repeated.

Suffice it to say that the action brought by Petitioner in the Detroit Court was a separate action for damages and not an attempt to review any State Court proceeding (R-58a — lines 14-15).

II.

As to Petitioner being a proper party to present the issues described in his complaint.

The issues could be raised by any party who was similarly deprived of his rights or against whom there was a conspiracy to deprive of rights.

The Petitioner is the only person who could be the party plaintiff in the instant case. It was the Petitioner's complaints that were arbitrarily brushed aside and denied access to the usual channels of processing provided for complaints under Rule 15 of the Rules Concerning the State Bar. It was the Petitioner who was arbitrarily denied a writ of mandamus by the State Supreme Court when, according to law, such writ should have issued to compel the State Bar to follow its own rules.

The Petitioner is certainly the proper party to present the issues, because it was the Petitioner against whom the conspiracy to deprive was directed and it was the Petitioner who was actually deprived of his constitutional rights.

The argument of the State Bar is clearly stated on page 30 of the State Bar Brief — "* * * Neither is there any vested right on the part of a complainant to have a hearing ensue in any case in which he files assertions with the State Bar of Michigan, regardless of the form in which said assertions are set forth * * *." (Center last paragraph).

In effect, counsel for the State Bar frankly contends that, even though the law, the Rules Concerning the State Bar of Michigan, expressly provides for redress of grievances against members of the State Bar by setting out the manner of filing complaints and the specific steps for processing the same — that in spite of these clearly stated procedures set up to protect the citizens from the attorneys, such stated provisions are meaningless, they are only a window dressing to lull the citizenry into a feeling of security, they are only a ruse to mislead the public into having confidence in the State Bar, they are not at all what they seem. The rules give no right to anyone to do anything, to get anything, to recover anything or to have anything considered, investigated, heard or determined.

Certainly this Court cannot accept this assertion that amounts to an admission that the State Bar of Michigan is a fraud and that the State Supreme Court is ready and willing to join said State Bar in perpetrating one great fraud on the people of the State of Michigan, — cannot accept it with approval and permit such a fraud to continue. Petitioner has contended all along that in the administration of the State Bar of Michigan it has actually been a great fraud, a hoax, fooling the public instead of serving the public. However, the meaning of counsel's statement of the State Bar's position is clear: he says that no matter what form is used, no matter how many copies are furnished, no matter how serious the complaint, no complainant has a right to have his complaint heard.

This Petitioner contends that the Rules were written for a purpose, and that purpose was to protect the public. If such protection is to be accomplished, the provisions for filing complaints must give a vested right to the complainant to have that complaint processed to some determination. Certainly the complainant cannot control the determination itself, this must depend upon the facts, but the complainant does have a vested right to have his complaint processed.

The arbitrary whims of the officers of the State Bar should not be able to sidetrack any complaint and deprive the complainant of having it processed. In the regular course of processing a complaint, it may be dismissed after investigation, it may be dismissed after a confirmed accounting by the accused attorneys that the assertions in the complaint are unfounded — but it must be processed and disposed of in some manner meeting the requirements of due process.

Such was not done in the case at bar. The arbitrary position stated by counsel for the State Bar explains very simply why this Petitioner was not recognized by the State Bar. According to the position of the State Bar, no citizen has any rights, they are only made to believe they have rights. Supreme Court of Michigan supports this great fraud in Michigan.

On page 32 of counsel's Brief gives the *Lathrop vs. Donohue* case, but this is not applicable here — issues are different; the statute is different; the circumstances are different. Petitioner is not an attorney, but an ordinary citizen.

III. A. As to grounds for relief.

Counsel for the State Bar again resorts to his well practiced art of evading and avoiding the real issue; the arguments submitted in the State Bar Brief are absurd and in no way related to the question.

The grounds for relief, as repeatedly stated, are all wrapped around the failure and refusal of the State Bar to process the complaints of the Petitioner; the deprivation of his right to have his petitions for redress con-

sidered in a manner that would satisfy due process; the deprivation of rights guaranteed by the Constitution.

Whether the attorneys are disciplined or not, whether the Petitioner loses or receives his share of his mother's estate are moot questions here. The question is whether or not the Petitioner was deprived of his constitutional rights or was the victim of a conspiracy to deprive him of such rights.

B. *As to damages.*

In the complaint filed by this Petitioner in the District Court, Par. 150 (R-31a), the claim of damages is clearly set forth. The issue of damages was not raised or argued in either the District Court or in the Court of Appeals, so it is not properly raised here. However, Counsel for State Bar again tries to distort the facts, confuse the issues and pull a herring across the trail by discussing irrelevant matters.

C. *As to equal application of the law.*

This point has been covered repeatedly and need not be set forth again. Suffice it to say that the arguments submitted in behalf of the State Bar are again obvious distortions of the facts and wilful wanderings from the truth.

D. *As to denial of hearing.*

This point has also been covered in other arguments.

E. *As to conflicting statements.*

Petitioner admits that there were obvious conflicts in regard to his complaints, but states the truth to be that all such conflicts and contradictions were on the part of the State Bar and its officials and attorneys and not on the part of the Petitioner.

Even the argument of counsel are false and contrary to the facts well known to him — all of which is fully set forth in other portions of the Appendix, Petition and Brief.

IV. As to judicial disqualification.

(a) Petitioner refers again to Rule 3 of the Supreme Court Rules Concerning the State Bar of Michigan, which requires judges to register as active members and subjects them to suspension for failure so to do.

The Integrated Bar knows no such thing as a voluntary member — the very purpose is to establish compulsory membership.

These arguments are otherwise answered in the Petition. The question of compulsory memberships of judges has never before been raised and should be determined.

(b) Petitioner's position of claiming disqualification of judges is not unsupported or unwarranted as falsely stated by counsel for the State Bar, counsel for the State Bar adroitly neglects to deny the claims of the Petitioner and again hedges on the facts, distorts the issues and attempts to invoke a prejudice against the Petitioner by stating unsupported opinions of his own without legal or judicial authority.

Federal Judges and Justices should not be compulsory members of the Labor Union of the State Bar of Michigan, as only the President and the United States Senate have that authority. This should be decided by this Court in the matter. Respondent Michigan Supreme Court has not served Petitioner with their reply to date.

CONCLUSION

Petitioner still contends that Certiorari should be granted.

Respectfully submitted,

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Dated: November 27, 1961.